

REMARKS/ARGUMENTS

Claims 1-17, 19-21, 23-43, 45-56, 58, 59, 62-66, 68, 71-75, and 77-86 are pending.

In response to the Office Action, favorable reconsideration and allowance of the present application are respectfully requested. In view of the present amendments, it is respectfully submitted that all claims are now in condition for allowance, particularly in view of the indication of allowable subject matter in the Office Action.

Election of Species Requirement and

Rejection under 35 U.S.C. § 112, Second Paragraph

It is respectfully submitted that the Office Action continues to incorrectly identify the claims that are readable and not readable upon the elected species. For example, the Office Action indicates Claim 59 is not readable upon the elected species. However, elected Figures 4 and 5 clearly depict the subject matter of Claim 59. The indication of the Office Action that Figure 5 does not depict the reservoir coupled to the second coupling of the handle or grasping element is not understood, as this feature is shown in Figure 4. Figures 4 and 5 are the same embodiment, and Figure 4 depicts the reservoir coupled to the grasping element. The reference to first and second "positions" has been eliminated from Claim 59, as this potentially was the source of the confusion in the Office Action. However, it is submitted that Claim 59 is clearly readable upon the elected species, and in fact, is generic.

In addition, the Office Action indicates Claim 32 is not readable upon the elected species, even though the previous Office Action recognized Claim 32 as allowable and readable upon the elected species. Now, without any explanation, the Office Action indicates Claim 32 is withdrawn. It is respectfully submitted that Claim 32 is clearly readable upon the elected species. Figure 4 clearly depicts a reservoir connected to the grasping element. If the

assertion that Claim 32 is not readable is due to the feature in which the arms are held by a resilient mechanism, it is submitted that this feature is also associated with elected Fig. 5. For further clarification, Claim 32 is amended to recite that the grasping element is detachably connected to the reservoir (as discussed below, a similar amendment is made to Claim 74). It is respectfully submitted that Claim 32 reads upon the elected species and is in condition for allowance.

Finally, the Office Action rejects Claim 49 under 35 U.S.C. § 112, second paragraph, apparently failing to recognize that Claim 49 is directed to the non-elected species. Allowed Claim 47 is generic, and Claim 49, directed to the non-elected species of Figures 1-3 is therefore also allowable. Claim 47 (acknowledged as allowable in the Office Action) includes the feature in which the grasping element can be connected to the reservoir, and can prevent the applicator from being charged when the applicator is applied against the surface. (By contrast, for example, with arrangements in which the applicator is always in contact with or being fed by a reservoir during application, it can be difficult to control the amount of product being applied.) Thus, in accordance with one of the features of the invention, the applicator is not in contact with the reservoir when the applicator is in contact with the surface to which the product is being applied. Claim 47 is generic to both species, because the reservoir can be connected to the reservoir as shown in Fig. 4, or as shown in Figs. 1-3 (i.e., with the reservoir associated with a cap which is connected to the grasping element). Claim 49 further recites that the reservoir is provided in the cap. Although Applicants agree that Claim 49 is directed to the non-elected species, it is respectfully submitted that Claim 49 is definite. Further, since Claim 49 depends from Claim 47, which the Office Action acknowledged as allowable, it is respectfully submitted that Claim 49 should be allowed along with independent Claim 47.

Applicant's previous response rewrote a number of claims in independent form, in response to the indication of allowable subject matter. However, the Office Action now indicates such claims are directed to the non-elected embodiment. It is submitted that the withdrawal of such claims from consideration is improper, because the previous Office Action purported to have searched and examined such claims in determining they were allowable. Nevertheless, in order to advance prosecution, such claims are now placed in their previous dependent form. Since each of the claims directed to non-elected features or species depends from an allowable claim (as discussed further below), it is submitted that all claims are now in condition for allowance.

#### Rejections Based on Prior Art

The indication of allowable subject matter is gratefully acknowledged. The present application includes independent Claims 1, 10, 12, 24, 32, 33, 47, 56, 58, 74, and 86. For the reasons set forth in detail below, it is submitted that all claims are now in condition for allowance.

Independent Claims 33 and 56 were acknowledged as allowable in the Office Action, and therefore, the claims depending from these claims are allowable for at least the same reasons.

Claim 10 is amended to include the features of allowable Claim 18, and therefore, Claim 10 and the claims depending therefrom are also allowable. In addition, Claims 12, 47 and 58 were indicated as allowable if rewritten in independent form, and therefore, these claims are also allowable as acknowledged in the Office Action.

Claim 74 includes the feature previously set forth in Claim 83, in which the reservoir is detachably connected to the grasping element. It is believed that the Office Action

acknowledged this feature as not shown in the cited references, in view of the indication of Claim 83 as allowable. This feature is also set forth in independent Claim 32, and new claim 86. It is respectfully submitted that none of the cited references discloses or renders obvious the features of Claims 32, 74 and 86, and therefore, these claims are also allowable.

(Discussion relevant to these claims is also provided below in connection with the discussion of the Glover rejection.).

In view of the subject matter acknowledges as allowable in the Office Action, it is believed that only independent Claims 1 and 24 were not clearly acknowledged as allowable in the Office Action. However, as discussed below, it is submitted that these claims are now also in condition for allowance.

Claim 1 includes the feature in which a reservoir containing a makeup product is at least partially concealed within a cavity of the device. Further, Claim 1 recites that the applicator is coupled to both of the arms of a grasping element, with the arms or the junction at least partially elastically deformable. It is respectfully submitted that the cited references fail to disclose or render obvious the combined features of Claim 1.

The Office Action indicated that Claim 1 was anticipated by Glover. However, Glover merely provides a separate container (Figure 13) for a product, but fails to disclose or suggest a device having a reservoir at least partially concealed within the device. Further, Glover and the remaining cited references fail to disclose or suggest the desirability or the manner in which a product-containing reservoir can be at least partially concealed within the device. Accordingly, it is submitted that Claim 1 is in condition for allowance, as are the claims depending therefrom. Further, it is submitted that the claims depending from Claim 1 recite numerous features which are not disclosed or suggested by the cited references.

Claim 74 was also rejected as anticipated by Glover. As indicated above, it is believed that this rejection is overcome by inclusion of the feature previously set forth in allowable Claim 83 in Claim 74. The same is also true with respect to Claim 32. In addition, new Claim 86 also includes the feature in which a reservoir is detachably connected to the grasping element. Accordingly, because Glover fails to disclose or suggest providing a reservoir detachably connected to a grasping element, and therefore, these claims are also in condition for allowance.

The Office Action also indicated that MacDonald anticipated Claim 1. However, even prior to the present amendment, it is respectfully submitted that MacDonald did not anticipate Claim 1. First, MacDonald does not disclose an applicator extending between arms, with a junction between the arms and a grasping element, and with at least one of the arms or the junction being at least partially elastically deformable. Further, MacDonald relates to a dental tool, and there is no disclosure or suggestion as to a reservoir which is at least partially concealed within a device, and which contains a makeup product.

Accordingly, it is submitted that MacDonald also fails to disclose or render obvious the features of Claim 1 or the claims depending therefrom.

The combined features of Claim 24 are also not disclosed or suggested by the cited references. Like Claim 1, Claim 24 includes the feature in which the reservoir is at least partially concealed within the device. Further, Claim 24 recites that the arms and reservoir are movable relative to each other to place the applicator in contact with the cosmetic product. By contrast, with an arrangement as shown, for example, in MacDonald, the floss is paid out through the reservoir, with the reservoir apparently including the floss, and optionally, a medical treatment. However, the arms in MacDonald are not movable relative to the reservoir in order to apply the product, but rather, the floss is simply fed from the

reservoir. In MacDonald, the position of the arms relative to the reservoir is fixed. By contrast, with the arrangement of Claim 24, the arms and reservoir are movable relative to each other in order to place the applicator in contact with the cosmetic product within the reservoir. None of the cited references discloses or suggests such an arrangement.

In view of the foregoing, it is respectfully submitted that each of the independent claims is now in condition for allowance. The dependent claims recite additional patentable features, and in any case, are allowable for at least the same reasons as the independent claims. Further, since all claims directed to non-elected features depend from an allowable independent claim, it is submitted that all claims are now in condition for allowance.

#### The Objection to the Drawings

The Office Action objected to the drawings as not depicting a reservoir integral with the cap in Figures 4-9. However, as noted above, this might be due to the failure to recognize that Claim 49 was directed to a non-elected species of Figures 1-3. Since Figures 1-3 clearly depict the reservoir associated with the cap it is submitted that the requirement for this feature to be depicted in the drawings is met. Further, as noted above, although Claim 49 is directed to a non-elected species, because it depends from allowable Claim 47, Claim 49 is in condition for allowance.

With regard to the comment regarding Claim 76, in order to advance prosecution, Claim 76 is canceled. Nevertheless, it should be recognized that the claims which do not specify a particular shape of a connection surface are not limited to a particular shape.

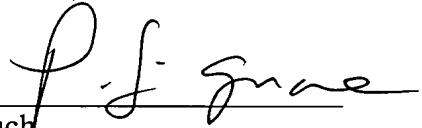
Conclusion

For the foregoing reasons, it is respectfully submitted that this application is now in condition for allowance. A Notice of Allowance for Claims 1-17, 19-21, 23-43, 45-56, 58, 59, 62-66, 68, 71-75 and 77-86 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, he is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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